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JAN 24 2012
OFFICE OF PETITIONS

In re Application of :
Bennett et al. :
Application No. 09/680,654 : ON APPLICATION FOR
Filed: October 6, 2000 : PATENT TERM ADJUSTMENT
Docket No. PSTM0015/MRK :

This is in response to the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE UNDER 37 C.F.R. § 1.705(b)," filed January 10, 2012.

The request for review of the patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated records to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **two thousand four hundred sixty (2460) days**. A copy of the updated PTA screen, showing the correct determination, is enclosed.

On October 11, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 2497 days. On January 10, 2012, applicants submitted the instant petition. Applicants disclose three additional reductions.

Applicants disclose the Office failed to enter a 31 day reduction pursuant to 37 CFR 1.704(b) in connection with the May 10, 2001 response to the January 8, 2001 Notice to File Missing Parts of Nonprovisional Application.

Applicants disclose the Office failed to enter a 59 day reduction pursuant to 37 CFR 1.704(c)(7), because applicants

filed a non-compliant appeal brief on July 3, 2006 and did not file a complaint appeal brief until August 31, 2006.

Applicants disclose the Office failed to enter a 5 day reduction pursuant to 37 CFR 1.704(c)(8) in connection with the Information Disclosure Statement, filed May 25, 2011, after applicants filed a RCE on May 20, 2011 in response to the Decision on Appeal, mailed March 22, 2011.

The Office concurs that pursuant to 37 CFR 1.704(b), a period of reduction should have been entered in connection with the filing of a response on May 10, 2001 to a Notice to File Missing Parts of Nonprovisional Application, mailed January 8, 2001. However, the Office calculates the period of reduction as 32, not 31 days.

37 CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, applicants did fail to engage in reasonable efforts to conclude processing of the application by failing to reply to the Notice to File Missing Parts of Application mailed January 8, 2001 within the three-month period provided for in 37 CFR 1.704(b). Applicants did not file a response until May 10, 2001. Accordingly, a period of reduction of 32 days is being entered for the period beginning on April 9, 2001, the day after the date that is three months after the date of mailing of the Notice, and ending on May 10, 2001, the date applicants' reply was filed.

The Office does not concur that pursuant to 37 CFR 1.704(c)(7) a 59 day reduction is warranted in connection with the filing of a defective appeal brief on July 3, 2006 and the subsequent filing of an acceptable appeal brief on August 31, 2006. The filing of a defective appeal brief is not an omission within the meaning of this section. This is because an appeal brief is not a reply to an Office action and the rule only considers filing a reply with an omission as a failure to engage. Accordingly, no reduction will be entered in connection with the filing of a defective appeal brief on July 3, 2006 and the subsequent filing of an acceptable appeal brief on August 31, 2006.

The Office concurs that 5 day reduction pursuant to 37 CFR 1.704(c)(8) is in order in connection with filing of a IDS on May 25, 2011, after applicants filed a RCE on May 20, 2011 in response to the Decision on Appeal, mailed March 22, 2011. Accordingly a reduction of 5 days is being entered.

In light thereof, the correct patent term adjustment is one thousand nine hundred thirty-five (1935) days, which is 695 (670 + 25) days of delay under 35 U.S.C. 154(b)(1)(A) + 485 days of delay under 35 U.S.C. 154(b)(1)(B) + 1002 days successful appeal period under 37 CFR 1.702(e) minus 247 (2 + 64 + 133 + 5 + 37 + 6) days of Applicant delay.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **two thousand four hundred sixty (2460) days**, which is 867 days of delay under 35 U.S.C. 154(b)(1)(A) + 1786 days successful appeal period under 37 CFR 1.702(e) - 193 (32 + 65 + 61 + 19 + 2 + 4 + 5 + 5) days of Applicant delay).

The Office acknowledges receipt of the required \$200.00 fee under 37 CFR 1.18(e) is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

A handwritten signature in cursive script, reading "Shirene Willis Brantley".

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PTA screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 09680654

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[Explanation of PTA Calculation](#)

[Explanation of PTE Calculation](#)

PTA Calculations for Application: 09680654

Application Filing Date	10/06/2000	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	2653
A Delays	867	PTO Manual Adjustment	37
B Delays	0	Applicant Delay (APPL)	156
C Delays	1786	Total PTA (days)	2460

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
134	01/24/2012		P028	Adjustment of PTA Calculation by PTO		37	0
123	10/11/2011	09/20/2011	MN/=.	Mail Notice of Allowance	21		103
122	10/07/2011		OAR	Office Action Review			0
121	10/07/2011		OAR	Office Action Review			0
120	10/07/2011		IREV	Issue Revision Completed			0
119	10/07/2011		DVER	Document Verification			0
118	10/03/2011		N/=.	Notice of Allowance Data Verification Completed			0
117	10/03/2011		EX.R	Reasons for Allowance			0
116	10/03/2011		CNTA	Allowability Notice			0
110	10/03/2011		INHY	case Inherited			0
109	10/03/2011		DOCK	Case Docketed to Examiner in GAU			0
105	05/26/2011		FWDX	Date Forwarded to Examiner			0
102	05/26/2011		ABN9	Disposal for a RCE / CPA / R129			0
113	05/25/2011		IDSC	Information Disclosure Statement considered			0
112	05/25/2011		IDSC	Information Disclosure Statement considered			0
111	05/25/2011		IDSC	Information Disclosure Statement considered			0
108	05/25/2011		EIDS.	Electronic Information Disclosure Statement			0
107	05/25/2011		EIDS.	Electronic Information Disclosure Statement			0
106	05/25/2011		EIDS.	Electronic Information Disclosure Statement			0
101	05/25/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
100	05/25/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
99	05/25/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
104	05/20/2011		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
103	05/20/2011		RCEX	Request for Continued Examination (RCE)			0
98	05/20/2011		BRCE	Workflow - Request for RCE - Begin			0
97	03/22/2011	05/02/2006	MAPDR	Mail BPAI Decision on Appeal - Reversed	1786		63
96	03/22/2011		APDR	BPAI Decision - Examiner Reversed			0
95	03/22/2011		MAPDN	Mail - BPAI Decision 41.50(b) In IFW: 196(b)			0
94	03/22/2011		APDN	BPAI Decision 41.50(b)			0
93	05/18/2009		AP_DK_M	Docketing Notice Mailed to Appellant			0
92	05/15/2009		APAS	Assignment of Appeal Number			0
91	04/30/2009		APWD	Appeal Awaiting BPAI Docketing			0
90	04/22/2009		TCBP	TC completion of return order			0
89	04/02/2009		MM327	Mail Miscellaneous Communication to Applicant			0
88	03/30/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
86	11/18/2008		APRD	Order Returning Undocketed Appeal to the Examiner			0
85	07/29/2008		APWD	Appeal Awaiting BPAI Docketing			0
84	10/30/2007		MRBNE	Mail Reply Brief Noted by Examiner			0
83	10/25/2007		RBNE	Reply Brief Noted by Examiner			0
80	02/02/2007		TCRD	Return of Undocketed appeal to the TC			0
79	02/02/2007		PACC	Exam. Ans. Review Complete			0
77	02/02/2007		APBR	Appeal Brief Review Complete			0
76	02/02/2007		FWDX	Date Forwarded to Examiner			0
75	01/24/2007		APRB	Reply Brief Filed			0
74	11/30/2006		MAPEA	Mail Examiner's Answer			0
73	11/27/2006		APEA	Examiner's Answer to Appeal Brief			0
72	09/13/2006		FWDX	Date Forwarded to Examiner			0
71	08/31/2006		AP.B	Appeal Brief Filed			0
70	08/02/2006		APBD	Notice -- Defective Appeal Brief			0
69	07/31/2006		APBR	Appeal Brief Review Complete			0
68	07/31/2006		FWDX	Date Forwarded to Examiner			0
67.1	07/03/2006		APBI	Defective / Incomplete Appeal Brief Filed			0
67	07/03/2006		AP.B	Appeal Brief Filed			0
66	05/19/2006		MAPCP	Mail Appeals conf. Proceed to BPAI			0
65	05/16/2006		APCP	Pre-Appeals Conference Decision - Proceed to BPAI			0

64	05/02/2006	AP.C	Request for Pre-Appeal Conference Filed	0
63	05/02/2006	04/27/2006 N/AP	Notice of Appeal Filed	5 61
62	04/13/2006	C.ADB	Correspondence Address Change	0
87	01/27/2006	IDSC	Information Disclosure Statement considered	0
78.7	01/27/2006	M844	Information Disclosure Statement (IDS) Filed	0
78	01/27/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
61	01/27/2006	MCTFR	Mail Final Rejection (PTOL - 326)	0
60	01/20/2006	CTFR	Final Rejection	0
56	11/15/2005	FWDX	Date Forwarded to Examiner	0
59	11/07/2005	IDSC	Information Disclosure Statement considered	0
58	11/07/2005	RCAP	Reference capture on IDS	0
57.7	11/07/2005	11/07/2005 M844	Information Disclosure Statement (IDS) Filed	55
57	11/07/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
55	11/07/2005	11/03/2005 A...	Response after Non-Final Action	4 54
54	08/03/2005	MCTNF	Mail Non-Final Rejection	0
53	07/25/2005	CTNF	Non-Final Rejection	0
43	05/11/2005	FWDX	Date Forwarded to Examiner	0
41	05/11/2005	FWDX	Date Forwarded to Examiner	0
39	05/11/2005	ABN9	Disposal for a RCE / CPA / R129	0
52	05/06/2005	LET.	Miscellaneous Incoming Letter	0
51	05/06/2005	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
44.7	05/06/2005	M844	Information Disclosure Statement (IDS) Filed	0
44	05/06/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
42	05/06/2005	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	0
40	05/06/2005	05/04/2005 RCEX	Request for Continued Examination (RCE)	2 36
38	05/06/2005	BRCE	Workflow - Request for RCE - Begin	0
48	03/31/2005	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
36	02/04/2005	MCTFR	Mail Final Rejection (PTOL - 326)	0
35	02/04/2005	CTFR	Final Rejection	0
34	01/05/2005	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
32	11/27/2004	FWDX	Date Forwarded to Examiner	0
33.7	11/22/2004	11/03/2004 M844	Information Disclosure Statement (IDS) Filed	19 31
33	11/22/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
37.7	11/19/2004	EIDS.	Electronic Information Disclosure Statement	0
37	11/19/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
31	11/03/2004	09/03/2004 A...	Response after Non-Final Action	61 27
30	11/03/2004	WAND	Workflow incoming amendment IFW	0
29	10/02/2004	NINA	Mail Notice of Informal or Non-Responsive Amendment	0
28	10/02/2004	FWDX	Date Forwarded to Examiner	0
27.1	09/03/2004	A.I.	Informal or Non-Responsive Amendment after Examiner Action	0
27	09/03/2004	06/30/2004 A...	Response after Non-Final Action	65 22
26	09/03/2004	XT/G	Request for Extension of Time - Granted	0
23	09/03/2004	WAND	Workflow incoming amendment IFW	0
47	03/31/2004	LET.	Miscellaneous Incoming Letter	0
22	03/31/2004	12/06/2001 MCTNF	Mail Non-Final Rejection	845 0.5
21	03/22/2004	CTNF	Non-Final Rejection	0
20	03/02/2004	DOCK	Case Docketed to Examiner in GAU	0
19	08/26/2002	DOCK	Case Docketed to Examiner in GAU	0
18	04/23/2002	DOCK	Case Docketed to Examiner in GAU	0
17	04/23/2002	DOCK	Case Docketed to Examiner in GAU	0
16	04/23/2002	DOCK	Case Docketed to Examiner in GAU	0
115	12/10/2001	IDSC	Information Disclosure Statement considered	0
114	12/10/2001	IDSC	Information Disclosure Statement considered	0
82	12/10/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
81	12/10/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
15.7	12/10/2001	M844	Information Disclosure Statement (IDS) Filed	0
15	12/10/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
14	12/06/2001	DOCK	Case Docketed to Examiner in GAU	0
13	12/06/2001	DOCK	Case Docketed to Examiner in GAU	0
49	08/22/2001	LET.	Miscellaneous Incoming Letter	0
12.7	08/22/2001	M844	Information Disclosure Statement (IDS) Filed	0
12	08/22/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
50	08/17/2001	LET.	Miscellaneous Incoming Letter	0
11.7	08/09/2001	M844	Information Disclosure Statement (IDS) Filed	0
11	08/09/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
10	06/21/2001	DOCK	Case Docketed to Examiner in GAU	0
9	06/14/2001	DOCK	Case Docketed to Examiner in GAU	0
8	05/22/2001	OIPE	Application Dispatched from OIPE	0
7	05/19/2001	COMP	Application Is Now Complete	0
6	05/19/2001	C.AD	Correspondence Address Change	0
5	05/19/2001	C.AD	Correspondence Address Change	0
4	01/08/2001	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
3	01/06/2001	C.AD	Correspondence Address Change	0
2	11/22/2000	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/06/2000	IEXX	Initial Exam Team nn	0
0.5	10/06/2000	EFIL	Filing date	0

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